IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6896 of 2007()

CRMP.1936/2007 of DISTRICT COURT, PATHANAMTHITTA
CR.NO.63/07 OF KONNY EXCISE RANGE]

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PETITIONERS/ACCUSED 1 AND 2:

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1. SALLY @ LOLA, W/O.LATE RAMACHANDRAN,
KANJIRAPALLIL HOUSE, KAIPATTOOR MURI,
VALLICODE VILLAGE, KOZHENCHERRY TALUK.

2. SASIKALA, W/O.MONEY,
KANJIRAPPALLIL HOUSE, KAIPATTOOR MURI,
VALLICODE VILLAGE, KOZHENCHERRY TALUK.

BY ADV. SRI.JOHN BRITTO
SRI.C.A.RAJEEV

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY THE
EXCISE INSPECTOR, KONY RANGE, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6896 of 2007

Dated this the 14th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners, two women, face allegations under the Kerala Abkari Act. 2.5 litres of arrack was allegedly seized from the possession of the petitioners, who allegedly were engaged in the illicit activity of sale of spurious liquor. The petitioners were not arrested at the scene of the crime, as the detecting excise party did not consist of any women official. The petitioners' names and complicity are mentioned clearly in the scene mahazar as also in the occurrence report. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. If as a matter of fact the allegations were true, nothing prevented the excise officials to get women officials and secure the arrest of the petitioners. The allegations are totally false. Political motivations are prompting the officials to make false allegations against the petitioners. The petitioners owe allegiance to the Mahila Congress and those in the ruling party are ill disposed towards them, it is submitted. In these

circumstances, anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations are true and correct and the available indications point convincingly to the guilt of the petitioners. The officials have no animosity or ill will against the petitioners. There is no worthwhile allegations or any such materials to show any ill will for the officials concerned. In these circumstances, the petitioners may not be granted anticipatory bail. They may be directed to resort to the ordinary course of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. In the facts and circumstances of the case, I find merit in the opposition by the learned Public Prosecutor. I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must surrender before the learned Magistrate having jurisdiction or the Investigating Officer and then seek bail in the regular and ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioners surrender before the Investigating Officer or the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-